

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Eric Rigie	Team: Squad #1	CCRB Case #: 201506665	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 08/09/2015 8:29 PM	Location of Incident: Opposite of 2336 Second Avenue	Precinct: 25	18 Mo. SOL 2/9/2017	EO SOL 2/9/2017	
Date/Time CV Reported Mon, 08/10/2015 9:45 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Mon, 08/10/2015 9:45 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Sean Mccarren	4311	943542	PSA 5

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Moises Ramos	14571	956009	PSA 5
2. POM Moses Jang	14924	956003	PSA 5

Officer(s)	Allegation	Investigator Recommendation
A.SGT Sean Mccarren	Abuse: Sgt. Sean McCarren interfered with § 87(2)(b)'s use of a recording device.	

### Case Summary

On August 9, 2015, at approximately 8:29 p.m., § 87(2)(b) was filming a group of three or four PSA 5 officers, including Sgt. Sean McCarren, PO Moises Ramos, PO Moses Jang, who were investigating a situation involving § 87(2)(b) opposite of 2336 2<sup>nd</sup> Avenue in Manhattan. § 87(2)(b)

After a short period of time, the officers placed § 87(2)(b) under arrest for consuming alcohol in public and having four active warrants. The officers escorted § 87(2)(b) to marked van# 9345. § 87(2)(b) moved closer to the officers in order to get a better angle to film the arrest. Sgt. McCarren then told § 87(2)(b) to move back to where he was before. § 87(2)(b) refused, saying that he was standing at a reasonable distance. Sgt. McCarren told him that he was not standing at a reasonable distance, but § 87(2)(b) refused to move. Sgt. McCarren responded by turning the van's spotlight to shine at § 87(2)(b) thus interfering with his ability to record the incident (**Allegation A**). § 87(2)(b) complained to Sgt. McCarren, but the sergeant did not respond or issue any further instructions. After approximately two minutes, § 87(2)(b) moved towards the rear of the van and Sgt. McCarren moved the spotlight to continuously shine at § 87(2)(b). When § 87(2)(b) got to the back of the van, he moved past the turning radius of the spotlight. Sgt. McCarren then got out of the passenger seat of the van and shined his flashlight at § 87(2)(b) for approximately two additional minutes. Sgt. McCarren then reenters the van, and the officers left the scene. § 87(2)(b) was not arrested or summonsed.

Closure of this case was delayed past 90 days, because § 87(2)(b) accepted mediation and the case was sent to the Mediation Unit on September 3, 2015. On October 27, 2015, this case was returned to active investigation, because § 87(2)(b) changed his mind. § 87(2)(b) On October 27, 2015, a call was placed to § 87(2)(b) who changed his mind again and accepted mediation. The case was sent back to the Mediation Unit on October 28, 2015. On November 24, 2015, this case was returned a second time to active investigation, because § 87(2)(b) changed his mind a third time and rejected mediation, on the advice of his civil attorney.

A video of this incident was obtained from § 87(2)(b). § 87(2)(b) provided two additional videos of this incident to the investigation. Two of § 87(2)(b)'s videos captured **Allegation A** in its entirety. The third video showed § 87(2)(b)'s interaction with officers prior to § 87(2)(b)'s arrest, but captured no FADO allegations.

### Mediation, Civil and Criminal Histories

- § 87(2)(b) accepted Mediation for this case, but changed his mind and rejected mediation on October 27, 2015. § 87(2)(b) changed his mind and reaccepted mediation, also on October 27, 2015. § 87(2)(b) changed his mind a third time on November 24, 2015 and rejected mediation on the advice of his civil attorney (see IA's pertaining to mediation).
- On December 10, 2015, a FOIL request to the Office of the Comptroller confirmed that § 87(2)(b) filed no notices of claim for this incident (01 Board Review).

- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]  
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### Civilian and Officer CCRB Histories

- § 87(2)(b) [redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]  
[redacted]
- Sgt. McCarren has been a member of the NYPD for eight years and has four previous CCRB cases involving seven allegations, including one substantiated allegation for refusal to provide his name and shield. That allegation, part of CCRB# § 87(2)(b) [redacted] also involved § 87(2)(b) [redacted] § 87(2)(g) [redacted]

### Findings and Recommendations

#### **Allegation A –Abuse of Authority: Sgt. Sean McCarren interfered with § 87(2)(b) [redacted] s use of a recording device.**

§ 87(2)(b) [redacted] said that he was initially standing approximately 20 or 30 feet from the officers and that he walked a little closer when § 87(2)(b) [redacted] was arrested and escorted to the van. The arrest of § 87(2)(b) [redacted] appeared unremarkable and the officers had no difficulty arresting him. Sgt. McCarren noticed § 87(2)(b) [redacted] and told him to go back over where he was previously standing. § 87(2)(b) [redacted] refused by saying that he was standing a reasonable distance from the officers. § 87(2)(b) [redacted] also said that Sgt. McCarren should do his job and not worry about § 87(2)(b) [redacted] § 87(2)(b) [redacted] did not know exactly how far he was standing from the officers, but panned his camera towards his feet and then back towards the van to show the distance on his video. Sgt. McCarren then shined his van's spotlight at § 87(2)(b) [redacted] blinding his vision and preventing him from recording the interaction. § 87(2)(b) [redacted] complained that he was standing at a reasonable distance, but Sgt. McCarren continued shining the light at him. Neither Sgt. McCarren nor any of the other officers issued any further commands to § 87(2)(b) [redacted] or took any other action. After an unknown period of time, § 87(2)(b) [redacted] walked along a nearby wall behind the van, to a point further away

from the officers. Sgt. McCarren noticed § 87(2)(b) got out of his van and shined his flashlight at § 87(2)(b) in a further attempt to prevent his recording (04 Board Review).

In § 87(2)(b)'s video of the incident, § 87(2)(b) is filming from the sidewalk in front of the marked police van. The video appears to have been shot at dusk with the area starting to go dark, but still well lit. § 87(2)(b) appears to walk closer to the side of the van where a group of officers is standing. At 00:13 Sgt. McCarren, sitting in the passenger seat of the van asks, "Sir, how did you end up over here? Go back over there." Sgt. McCarren points towards the direction § 87(2)(b) had walked from. § 87(2)(b) is heard telling Sgt. McCarren that he is at a reasonable distance. Sgt. McCarren replied, "No, a reasonable distance is back where you were. You shouldn't have a problem with it. Go back where you were." § 87(2)(b) is heard asking Sgt. McCarren if he is serious and the sergeant replies that he is. § 87(2)(b) then pans his camera towards his feet and back toward the van. § 87(2)(b) appears to be standing approximately 10 or 15 feet from the van. While performing this action, § 87(2)(b) says, "As you can see, I'm at a reasonable distance." At 00:32, Sgt. McCarren can be seen manipulating a control on the dashboard of the van and the spotlight of the van then shines directly at § 87(2)(b). § 87(2)(b)'s video is blocked by the bright light, But Sgt. McCarren can be heard saying, "Back up sir." The light shines continuously at § 87(2)(b) and follows him as he walks toward the back of the van at 02:07. At 02:16, the spotlight is no longer directly shining at § 87(2)(b) but another light comes on and shines at him from the direction of where Sgt. McCarren was sitting in the van. This light shines continuously at § 87(2)(b) until 03:56 when Sgt. McCarren angles the light towards his feet. The picture is out of focus and blurry at this point, but § 87(2)(b) appears to be approximately 15 or 20 feet from the officers (see Snagit clip of § 87(2)(b)'s video linked below, 04:02 length).



201506665\_20151210\_1524\_DM.mp4

Sgt. McCarren said that he was familiar with § 87(2)(b) and § 87(2)(b) prior to this incident, but had not had any personal interactions with him. Sgt. McCarren said that he was on the scene for a few minutes when § 87(2)(b) arrived and began filming from over 20 feet away. Sgt. McCarren described the lighting during the incident as dusk and getting dark. Sgt. McCarren said that § 87(2)(b) was holding a camcorder, but did not recall what § 87(2)(b) was wearing or if he was carrying any other equipment. After an unknown amount of time, § 87(2)(b) was placed under arrest and escorted to the van. At that point, § 87(2)(b) walked closer until he was approximately 10 feet away from the officers. Sgt. McCarren did not consider 10 feet to be a reasonable distance and explained that officers are trained to keep a 20 foot minimum zone of safety during incidents. Sgt. McCarren asked § 87(2)(b) how he got closer and told him to go back to where he was standing before. § 87(2)(b) replied that he was standing a reasonable distance away. Sgt. McCarren replied, "No you're not. Go back to where you were. Where you were was fine." § 87(2)(b) refused to move. Sgt. McCarren was not sure how many times he told § 87(2)(b) to move back and was not sure if he told him more than once. Sgt. McCarren then turned on his van's spotlight so that it shined at § 87(2)(b) in order to keep an eye on § 87(2)(b). Sgt. McCarren did this for safety reasons, because § 87(2)(b) refused to move back when instructed. Sgt. McCarren said that aside from getting too close to the officers, § 87(2)(b)

was not doing anything else to cause him to fear for his safety and did not physically interfere with the arrest. Sgt. McCarren did not issue any further instructions to § 87(2)(b) because § 87(2)(b) failed to comply with his first instructions and he did not think that § 87(2)(b) would listen. No other officers issued instructions to § 87(2)(b). Sgt. McCarren continued to shine the van's spotlight at § 87(2)(b) until § 87(2)(b) walked to the rear of the van where the spotlight did not reach. Sgt. McCarren then got out of the van and shined his flashlight at § 87(2)(b) but did not give § 87(2)(b) any instructions. Sgt. McCarren continued to shine his flashlight at § 87(2)(b) for the remainder of the incident. Sgt. McCarren took this action for safety reasons, because he felt that § 87(2)(b) was still standing too close. Sgt. McCarren denied that he shined either light at § 87(2)(b) for the purpose of interfering with his filming of the incident (05 Board Review).

According to a Finest Message dated August 6, 2014, officers are not permitted to interfere with an individual's use of recording devices to record police interactions. Officers are permitted to advise individuals to not get too close and may take action only if the individual interferes with the operation or with the safety of officers or the public. Mere recording does not constitute interference in and of itself (06 Board Review).

§ 87(2)(b)'s video of the incident does not show § 87(2)(b) interfering with § 87(2)(b)'s arrest, which was confirmed by Sgt. McCarren. § 87(2)(b)'s video also demonstrates that he was at least 10 or 15 feet away from the officers when Sgt. McCarren instructed him to move back. § 87(2)(b) appeared to be fully cooperative with the officers, who appear relaxed throughout § 87(2)(b)'s video. No other officers issued any instructions to § 87(2)(b) and no officers ever took any action to make § 87(2)(b) move back. For his part, Sgt. McCarren said that, aside from standing too close, § 87(2)(b) did not do anything else to make the sergeant fear for his safety. Sgt. McCarren said that he shined the van's spotlight and his flashlight at § 87(2)(b) for the rest of the incident, in order to keep an eye on him, but § 87(2)(b)'s video shows that, although dusk, the scene was still well lit with daylight. Furthermore, § 87(2)(b)'s video showed that at the point where Sgt. McCarren was using his flashlight, § 87(2)(b) was standing at least 15 or 20 feet from the officers. § 87(2)(g)

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Squad: 1

Investigator: \_\_\_\_\_  
Signature Print Date

Pod Leader: \_\_\_\_\_  
Title/Signature Print Date

Attorney: \_\_\_\_\_  
Title/Signature                      Print                      Date